IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 562 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GI CHOPDA

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 562 of 1999

MR IS SUPEHIA for Petitioner No. 1

Mr. ND Gohil, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 27/08/2003

ORAL JUDGEMENT

In this petition the petitioner has challenged two orders. One is the order passed by the tribunal

dated 13.2.1998 in Appeal No. 374 of 1995 wherein the Gujarat State Civil Service Tribunal has modified the order of recovery of Rs. 33637.90 from the petitioner and has reduced the amount of recovery by ordering that a sum of Rs.23,637.90 only be recovered and not an amount of Rs. 33,637.90 from the appellant present petitioner. It has also ordered that any excess recovery over and above Rs.23,637.90 if already made from the petitioner may be reimbursed to him within a period of three months from the date of the said order.

During the course of hearing of this petition, learned AGP Mr.Gohil appearing for the respondent authorities has submitted that before the tribunal, the petitioner has made clear statement that if the amount of recovery is reduced by Rs.10,000.00 and if the relief is given to that extent, then, the petitioner is prepared to pay the rest of the amount of recovery as per the modifications made by the tribunal. Considering such clear statement made by the petitioner before he tribunal, the tribunal has modified the order of recovery by directing the petitioner to pay Rs.23,637.90 instead of Rs.33,637.90 as has been ordered as per the original order of recovery and, therefore, there is no necessity to interfere with such just and proper order based on the statement made by the petitioner. Learned advocate Mr. Supehia for the petitioner has not disputed this fact. In view of this, the tribunal has reduced the amount of recovery by reducing the amount of Rs.10,000.00 from the total amount of Rs.33,637.90 and subsequently the petitioner has paid the same as mentioned in the order of the collector at page 60 and, therefore, according to my opinion, the tribunal has committed no error in modifying the order of recovery and therefore, so far as the said challenge is concerned, no interference is warranted.

The second order challenged by the petitioner in this petition is the order of the District Collector, Ahmedabad dated 17th November, 1998 wherein the Collector has treated the period of suspension as such. It has been observed in the said order by the collector that by order dated 20.5.98, an amount of Rs. 23,637.00 has been ordered to be recovered which has been accepted by the petitioner and has deposited the said amount in the Government and the said order of recovery has been passed by way of punishment and, therefore, period from 27.1.87 to 12.2.90 during which the petitioner was placed under suspension was treated as such under rule 152 of the Bombay Civil Service Rules. Learned advocate Mr. Supehia has submitted that before deciding that question, and before deciding to treat the period of suspension as

such, the Collector has not afforded an opportunity as contemplated under rule 152 of the said Rules and, therefore, said order is violative of the principles of natural justice. He has placed reliance on the decision of this court reported in 1999 (1) GLH 150, in case of Ramsunder Shamlal v. Y.B. Jhala or his successor, Commissioner of Police, Ahmedaba and others. The Division Bench of this Court has considered rule 152 of the said Rules in the said decision wherein the Division Bench of this court has considered the decision of this Court in State of Gujarat v. Vrajlal Hansraj Sanghrajka reported in XIII 1972 GLR page 689. Relying upon the aforesaid decision of the Division Bench of this Court, he has submitted that before deciding as to whether the period of suspension should be treated as a period to have been spent on duty or as suspension, it is necessary for the authority to afford reasonable opportunity to the employee concerned. Relevant observations made in para 5 and 6 of the said decision reported in 1999 (1) GLH page 150 are reproduced as under:

"5. In another case decided by a learned single Judge of this Court in State of Gujarat v. Vrajlal Hansraj Sanghrajka reported in XIII 1972 GLR 689, it was held as under:

'... While passing any order, the competent authority will be required to hold as to whether his case will fall under clauses (1), (2) or (3) of the said rule. Some times, it may happen that even though the Criminal Court on merits may have acquitted the accused and yet the final order may disclose as if benefit of doubt was given to him and he was acquitted. Therefore, in order to decide whether the person concerned was acquitted on merits or whether he was given benefit of doubt, it is essential that the person concerned should be heard by the competent authority. If without giving him an opportunity any order is passed behind his back, there was every likelihood of injustice being done to him. Even for the purpose of calculation of the actual suspension period, it would be necessary to hear the person concerned. "

6. Though the instant case stands on a different footing, the principles laid down in

> the above two cases can be followed while passing an order under section 152 of the BCSR. The order under Rule 152 of the BCSR is not passed as a part of punishment and as no such punishment is envisaged under Bombay Police Punishment Rules. As this order may some times have far reaching financial consequences as far as the employee is concerned, it is just and equitable that he be given reasonable opportunity of being heard and that alone would be perfectly in accord with the principles of natural justice. Therefore, we set aside Annexure "H" order, which is confirmed by Annexure "J" order, so far as it relates to the stand taken that the period of suspension be treated as such, and direct that the competent Authority may issue fresh notice to the appellant under Rule 152 of the BCSR and the appellant be heard before any decision is taken under Rule 152. The authorities may take a decision having regard to the provisions contained in Rule 152."

I have considered the said decisions. The order passed by the authority under rule 152 of the said Rules is not an order of punishment but it is an independent order or proceeding wherein rights of the petitioner as to whether he is entitled for the financial benefits from the respondents or not for the period for which he was placed under suspension and in view of that, it is an order having effect on the status and prestige of an employee in either way. If the order is against the employee treating the period of suspension as such, then, it is having adverse effect and before passing such an order having adverse effect, reasonable opportunity of hearing must be given to the employee concerned. In the facts of the present case, admittedly, no such opportunity in compliance of the principles of natural justice has not been given to the petitioner before passing such an order wherein the period of suspension has been treated as such. This order is having adverse effect on the financial position of the petitioner and his prestige and status in the society.

Recently, in the matter of BHUPINDER PAL SINGH VERSUS DIRECTOR GENERAL OF CIVIL AVIATION & OTHERS reported in 2003-II-LLJ page 1032 [August,2003 Issue], the question has been examined by the apex court that in case when any adverse orders are required to be passed against any person having adverse civil consequences against the person and it is also affecting his status

and prestige in the employment, then, before passing such adverse order, principles of natural justice must have to be followed, otherwise, order is not sustainable as being in violation of the principles of natural justice. In para 3 of the said decision, it has been observed by the Hon'ble apex court as under:

> " Looking to the assertion made by the appellant that no opportunity was given to him during the investigation or inquiry based on which the order was passed on July 21, 1999 adversely affecting his rights and status in the absence of any counter affidavit denying the same either before the High Court or before this Court, there is no impediment or difficulty in holding that the order dated July 21, 1999 was passed in violation of the principles of natural justice. Even a perusal of the impugned order indicates that no opportunity was given to the appellant. The High Court proceeded on wrong assumption that the second inquiry was not a de novo inquiry. It appears to us that no opportunity was given to the appellant either during the inquiry made for the first time or in the second inquiry. Since the order passed is in clear violation of principles of natural justice, it is unnecessary for us to go into the merits of the other contentions raised. In the normal course, we would have set aside the order giving liberty to the respondent to hold a fresh inquiry. Since the appellant has superannuated and at this length of time, we think it is neither appropriate nor desirable to direct a fresh inquiry."

Therefore, considering the facts and circumstances of the present case and also considering the law laid down by the apex court very recently as aforesaid, this petition is required to be partly allowed by declaring that the order dated 17.11.1998 is violative of the principles of natural justice as it has been passed without hearing the petitioner. In view of the above, the order dated 17.11.1998 is required to be quashed and set aside.

In the result, this petition is partly allowed. The order passed by the District Collector, Ahmedabad dated 17.11.1998 is hereby quashed and set aside with a direction to the Collector, Ahmedabad to reconsider the matter and pass appropriate order in accordance with law as regards the period during which the petitioner was

placed under suspension from 17.11.1987 to 12.2.1990 under rule 152 of the BCSRs as to whether the said period should be treated as a period spent on duty or should be treated as such after affording reasonable opportunity of hearing to the petitioner in compliance with the principles of natural justice, within three months from the date of receipt of copy of this order. In case if the authority comes to the conclusion that the said period is required to be treated as a period spent on duty, then, the consequential benefits will be immediately paid to the petitioner without any further delay since the petitioner has already retired from service and the amount of recovery as ordered by the tribunal has also been paid by the petitioner. The Collector is directed to pass appropriate orders under rule 152 of the BCSRs without being influenced by the order passed by the Inquiry Officer in the departmental inquiry. Rule is made absolute in terms indicated hereinabove with no order as to costs.

(H.K. Rathod,J.)